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## NOTICE OF ALLOWANCE AND FEE(S) DUE

73552 7590 06/02/2008

Stolowitz Ford Cowger LLP  
621 SW Morrison St  
Suite 600  
Portland, OR 97205

EXAMINER

TIV, BACKHEAN

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 06/02/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/007,164

11/30/2001

Richard Gore

2705-0702

4274

TITLE OF INVENTION: END-TO END PERFORMANCE TOOL AND METHOD FOR MONITORING ELECTRONIC-COMMERCE TRANSACTIONS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1440	\$0	\$0	\$1440	09/02/2008

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE  
Commissioner for Patents  
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

73552 7590 06/02/2008

Stolowitz Ford Cowger LLP  
621 SW Morrison St  
Suite 600  
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## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/007,164 11/30/2001 Richard Gore 2705-0702 4274

TITLE OF INVENTION: END-TO END PERFORMANCE TOOL AND METHOD FOR MONITORING ELECTRONIC-COMMERCE TRANSACTIONS

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1440 \$0 \$0 \$1440 09/02/2008

EXAMINER	ART UNIT	CLASS-SUBCLASS
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TIV, BACKHEAN 2151 709-224000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,164	11/30/2001	Richard Gore	2705-0702	4274
73552	7590	06/02/2008	EXAMINER	
Stolowitz Ford Cowger LLP 621 SW Morrison St Suite 600 Portland, OR 97205			TIV, BACKHEAN	
			ART UNIT	PAPER NUMBER
			2151	
DATE MAILED: 06/02/2008				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 945 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 945 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

**Notice of Allowability**

Application No.

10/007,164

Applicant(s)

GORE ET AL.

Examiner

Art Unit

BACKHEAN TIV

2151

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/29/08.
2. ☒ The allowed claim(s) is/are 1,4-12,14 and 16-19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date ____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date ____     | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance             |
|  | 9. <input type="checkbox"/> Other ____.   |

### EXAMINERS AMENDMENT

An examiner Amendment to the record appears below. Should the changes and/or additions be unacceptable to the applicant, an amendment may be filed as provided by 37 C.F.R 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Mr. Michael A. Cofield (Reg # 54,630) on May 20, 2008.

Please amend the claims as follows:

1. (Currently amended) A method comprising:  
simulating a transaction between a customer and one or more electronic commerce servers located in an enterprise network, said simulation performed using an access device located on a ~~an~~ perimeter of the enterprise network;  
wherein said simulation using the access device measures performance of an electronic commerce application independently of network conditions outside the enterprise network;  
pinging a customer network using the same access device used for said simulation;  
wherein said pinging measures network transport latency between the access device and the customer network independently of latency associated with the electronic commerce application; ~~and~~  
outputting said application performance measurement and said network transport latency measurement~~[[.]]~~;  
identifying a time of day associated with the measurements;  
determining a first network transport latency baseline using previously determined values of network transport latency for the identified time of day, the first

network transport latency baseline indicating an expected transport latency for the identified time of day;

determining a first application performance baseline using previously determined values of application performance measurements for the identified time of day, the first application performance baseline indicating an expected application performance for the identified time of day;

determining percentage deviation of said determined network transport latency measurement from the determined first network transport latency baseline;

determining percentage deviation of said application performance measurement from the determined first application performance baseline; and

outputting the measurements and the determined percentage deviations.

2-3. (Cancelled)

4. (Currently amended) The method of Claim 1 [[2]] wherein said method further includes:

calculating a second different network transport latency baseline, said second network transport latency baseline indicating the lowest measured network transport latency during a given time period; and

displaying the network transport latency measurement and said network transport latency baselines.

5. (Previously Presented) The method of Claim 4 wherein a single graph is displayed that indicates the network transport latency measurement and the network transport latency baselines.

6. (Currently amended) The method of Claim 1 [[2]] wherein said method further includes:

calculating a second different application performance baseline, said second application performance baseline indicating the lowest measured application performance during a given time period; and  
displaying the application performance measurement and said application performance baselines.

7. (Previously Presented) The method of Claim 6 wherein a single graph is displayed that indicates said application performance measurement and the application performance baselines.

8. (Currently amended) The method of Claim 1 [[2]] further comprising measuring application performance for each of a plurality of application components and wherein said application performance measurements for each of said plurality of application components is displayed.

9. (Previously Presented) The method of Claim 8 wherein a first application component performance baseline is determined for each of said plurality of application components.

10. (Previously Presented) The method of Claim 9 wherein a second application component latency baseline is determined for each of said plurality of application components and wherein said second application component latency baseline for each of said plurality of application components is displayed.

11. (Previously Presented) The method of Claim 10 wherein a graph is generated for each application component that includes the application component's application component performance, first application component latency performance and second application component performance baseline.

12. (Previously Presented) The method of Claim 11 wherein said application components include a login component, an order component, a configure component and a help component.

13. (Cancelled)

14. (Previously Presented) A computer system comprising:  
a bus;  
a memory unit coupled to said bus, said memory unit including instructions for determining latency associated with a communication path extending between a customer network and one or more enterprise servers;  
one or more processors coupled to said bus, the processors for executing said instructions, and when executing said instructions, operable to:  
determine network transport latency between the computer system and a network device located between a remote customer network and another network, said network latency corresponding to a first leg of the communication path, the first leg extending between the computer system and the remote customer network;  
transmit an application test from said computer system to said electronic commerce servers, wherein said application test is selected to represent at least a portion of said electronic commerce transactions;  
receive back a test response from the electronic commerce servers, the response for the application test;  
determine application test latency according to the received test response, wherein said application test latency corresponds to only a second leg of the communication path, the second leg extending from the computer system to the enterprise servers;  
determine a first network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time;  
determine a first application test latency baseline that indicates an average of previously determined values of application test latency for a given day and time; [[and]]



display said network transport latency, said application test latency, and said baselines[.];

determine deviation of said determined network transport latency from the previously determined values of network transport latency for the given day and time;

determine deviation of said determined application test latency from the previously determined values of said application test latency for the given day and time;  
and

display said determined deviation of said network transport latency and display said determined deviation of said application test latency.

15. (Cancelled)

16. (Previously Presented) The computer system as recited in Claim 14 wherein the processors are further operable to:

calculate a second different network transport latency baseline, said second network transport latency baseline indicating the lowest calculated network transport latency during a given time period; and

display said network transport latency, said first network transport latency baseline and said second network transport latency baseline on a same graph.

17. (Previously Presented) The computer system as recited in Claim 14 wherein the processors are further operable to:

calculate a second different application test latency baseline, said second application test latency baseline indicating the lowest calculated application test latency during a given time period; and

display said application test latency, said first application test latency baseline and said second application test latency baseline on a same graph.

18. (Previously Presented) The computer system as recited in Claim 14 wherein the processors are further operable to:

determine and display different application component latencies for each of a plurality of application components.

19. (Previously presented) The computer system as recited in Claim 18 wherein the processors are further operable to:

determine first application component latency baselines and second application component latency baselines for each of the plurality of application components; and

generate a graph for each of said plurality of application components, each graph including one of the application component's application component latency, first application component latency baseline and second application component latency baseline.

20-42 (Cancelled).

### Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

The prior art (Goldstein or Goldstein in view of Klassen) does not teach network transport latency and application performance baseline. The baseline is an average of previously determined values of network transport latency and application performance measurements for a given day and time and indicates **an expected** network transport latency and application latency for a given day and time. Percentage deviations are also calculated using the network transport latency and application performance measurements baselines for a given day and time(Figs. 5-7 of applicant's specification).

Also, the applicant has filed an Affidavit or Declarations under 37 CFR 1.131 which swears behind the Goldstein reference. The applicant actually reduced claimed invention to practice, prior to the May 9, 2001 effective filing date of Goldstein. The applicant's affidavit establishes the reduction to practice of the claimed invention to at least April 2, 2001.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2151